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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 IAN A. WOODS,

10 Plaintiff,

11 vs.

12 LAS VEGAS METROPOLITAN POLICE
13 DEPARTMENT, et al.,

14 Defendants.

Case No. 2:13-cv-01314-APG-CWH

ORDER

15 Plaintiff has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983. The court has
16 reviewed it pursuant to 28 U.S.C. § 1915A. The court will dismiss the Las Vegas Metropolitan
17 Police Department from this action. The court will serve the complaint upon the remaining
18 defendant for a response.

19 When a “prisoner seeks redress from a governmental entity or officer or employee of a
20 governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any
21 portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon
22 which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from
23 such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides
24 for dismissal of a complaint for failure to state a claim upon which relief can be granted.
25 Allegations of a pro se complainant are held to less stringent standards than formal pleadings
26 drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

27 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain
28 statement of the claim showing that the pleader is entitled to relief.” . . . [T]he pleading
standard Rule 8 announces does not require “detailed factual allegations,” but it demands

1 more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that
 2 offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action
 3 will not do.” Nor does a complaint suffice if it tenders “naked assertion[s]” devoid of
 4 “further factual enhancement.” . . .

5 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim to
 6 relief that is plausible on its face.” A claim has facial plausibility when the plaintiff pleads
 7 factual content that allows the court to draw the reasonable inference that the defendant is
 8 liable for the misconduct alleged. The plausibility standard is not akin to a “probability
 9 requirement,” but it asks for more than a sheer possibility that a defendant has acted
 10 unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s
 11 liability, it “stops short of the line between possibility and plausibility of ‘entitlement to
 12 relief.’”

13 Ashcroft v. Iqbal, 556 U.S. 662, 677-78 (2009) (citations omitted).

14 Plaintiff alleges that defendant Quintana, an officer of the Las Vegas Metropolitan Police
 15 Department, violated his constitutional rights when Quintana arrested him on a charge of domestic
 16 violence. Defendant Quintana will need to respond to these claims.

17 Plaintiff has named the Las Vegas Metropolitan Police Department as a defendant, and he
 18 also has sued defendant Quintana in his official capacity. In Kentucky v. Graham 473 U.S. 159, 165
 19 (1984), the Supreme Court clarified the distinction between official and personal capacity suits. The
 20 Court explained that while individual-capacity suits seek to impose personal liability upon a
 21 government official for actions performed under color of state law, official capacity actions
 22 generally represent another way “of suing an entity of which an officer is an agent.” Id. (quoting
 23 Monell v. Department of Social Services of City of New York, 436 U.S. 658, 690 n.55 (1978)). In
 24 order to establish personal liability in a § 1983 action, a plaintiff must show that an individual,
 25 acting under color of state law, caused a deprivation of a federal right. Graham, 473 U.S. at 166.
 26 By contrast, in an official-capacity action, a plaintiff must demonstrate that a policy or custom of an
 27 entity contributed to the violation of a federal law. Id. In other words, “the action that is alleged to
 28 be unconstitutional implements or executes a policy statement, ordinance, regulation or decision
 officially adopted and promulgated by that body’s officers.” Monell, 436 U.S. at 690. None of the
 allegations in the complaint indicate that defendant Quintana acted in accordance with any such
 policy statement or other official decision of the Las Vegas Metropolitan Police Department.
 Consequently, the court will dismiss the Las Vegas Metropolitan Police Department and the
 official-capacity claim against defendant Quintana.

1 IT IS THEREFORE ORDERED that the clerk of the court shall file the complaint.

2 IT IS FURTHER ORDERED that defendant Las Vegas Metropolitan Police Department,
3 and defendant Quintana in his official capacity only, are **DISMISSED** from this action for failure to
4 state a claim upon which relief may be granted.

5 IT IS FURTHER ORDERED that the clerk of the court shall issue summons to the
6 remaining named defendant and deliver same with a copy of the complaint to the U.S. Marshal for
7 service. Plaintiff shall have twenty (20) days in which to furnish to the U.S. Marshal the required
8 Forms USM-285. Within twenty (20) days after receiving from the U.S. Marshal a copy of the
9 Form USM-285 showing whether service has been accomplished, plaintiff must file a notice with
10 the court identifying which defendants were served and which were not served, if any. If plaintiff
11 wishes to have service again attempted on an unserved defendant(s), then a motion must be filed
12 with the court identifying the unserved defendant(s) and specifying a more detailed name and/or
13 address for said defendant(s), or whether some other manner of service should be attempted.
14 Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must be accomplished within
15 one hundred twenty (120) days from the date that the complaint was filed.

16 IT IS FURTHER ORDERED that from now onward, plaintiff shall serve upon defendants
17 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,
18 motion or other document submitted for consideration by the court. Plaintiff shall include with the
19 original paper submitted for filing a certificate stating the date that a true and correct copy of the
20 document was mailed to the defendants or counsel for the defendants. The court may disregard any
21 paper received by a district judge or magistrate judge which has not been filed with the clerk, and
22 any paper received by a district judge, magistrate judge or the clerk which fails to include a
23 certificate of service.

24 DATED: June 8, 2015.



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27 ANDREW P. GORDON
United States District Judge
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